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Attorneys for Defendants/Counter-Plaintiffs
 BAXTER INTERNATIONAL INC.
 and BAXTER HEALTHCARE CORPORATION

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

FRESENIUS USA, INC., a Massachusetts
 corporation; and FRESENIUS MEDICAL
 CARE HOLDINGS, INC., a New York
 corporation,

Plaintiffs/Counter-
 Defendants,

v.

BAXTER INTERNATIONAL INC., a
 Delaware corporation; and
 BAXTER HEALTHCARE CORPORATION,
 a Delaware corporation,

Defendants/Counter-
 Plaintiffs.

Case No. C-03-1431 SBA (EDL)

DECLARATION OF
 PATRICK KELLEHER
 IN SUPPORT OF BAXTER
 DEFENDANTS' MOTION TO BAR
 FRESENIUS' PROFFERED DAMAGES
 EXPERT PROFESSOR RUBINFELD

Hearing Date: April 11, 2006

Hearing Time: 1:00 P.M.

Judge: Hon. Sandra Brown Armstrong

Courtroom: Courtroom 3, 3rd Floor

1 I, Patrick J. Kelleher, declare:

2 1. I am a Partner in the law firm of Gardner Carton & Douglas LLP and am one of the
3 attorneys for defendants Baxter International Inc. and Baxter Healthcare Corporation (collectively
4 "Baxter") in this litigation.

5
6 2. I have personal knowledge of the facts stated in this Declaration and I gained this
7 knowledge during the course of representing Baxter in this litigation. If called to testify, I would
8 testify as stated herein and in my first Declaration.

9
10 3. Attached to this Declaration as Exhibit '1' is a true and correct copy of Professor
11 Daniel Rubinfeld's Expert Rebuttal Report.

12
13 4. Attached to this Declaration as Exhibit '2' is a true and correct copy of Professor
14 Rubinfeld's Corrected *curriculum vitae*.

15
16 5. Attached to this Declaration as Exhibit '3' is a true and correct copy of production
17 document F044538 cited in Footnote 7 of Prof. Rubinfeld's Report.

18
19 6. Attached to this Declaration as Exhibit '4' is a true and correct copy of an excerpt
20 from Fresenius' 510(k) Pre-Market Notification for the 2008K machine.

21
22 7. Attached to this Declaration as Exhibit '5' is a true and correct copy of the *2008K*
23 *Product Launch - Sept. 2000* document identified as Exhibit '69' in the deposition transcript of
24 Christian Schlaeper, Exhibit '6' hereto.

25
26 8. Attached to this Declaration as Exhibit '6' is a true and correct copy of an excerpt
27 from the deposition transcript of Christian Schlaeper.

11. Attached to this Declaration as Exhibit '9' is a true and correct copy of an excerpt from Fresenius' 2000 Annual Report.

13. Attached to this Declaration as Exhibit ‘11’ is a true and correct copy of *2008K: A Matter of Simplicity* identified as Exhibit ‘63’ in the Christian Schlaeper Deposition, Exhibit ‘6’ hereto.

Dated March 7, 2006
Chicago, IL

CH02/ 22441010.1